Lee Wai Kuen v Ladang Sri Harapan (Sabah) Sdn Bhd

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO S-02 (NCVC)(W)-212–02 OF 2022
HADHARIAH SYED ISMAIL, SUPANG LIAN AND MARIANA YAHYA JJCA
5 JULY 2023

Trusts and Trustees — Creation of trust — Allegation — Appellant's claim that bungalow held on trust by respondent for appellant was dismissed by High Court — Whether property was held on trust by respondent for appellant

This was an appeal against the decision of the High Court in dismissing the appellant's ('plaintiff') claims against the respondent ('defendant'). The shares of the defendant were bought over by Lee Poh Sin who passed away in 2018 ('the deceased') and his wife, Low Nang Hiang ('PW2'). The plaintiff and his sister ('DW2') were the shareholders and directors of the defendant. Lee Poh Sin and PW2 were the parents of the plaintiff and DW2. A bungalow in Sandakan, Sabah ('the bungalow') was purchased by the defendant in 2008 when the deceased was alive. The plaintiff pleaded that the bungalow was bought by the deceased for the plaintiff as a gift for his contribution to the family business as he would be spending more time in Sabah. The plaintiff alleged that after the deceased passed away, DW2 took control of the defendant and launched a series of court actions against the plaintiff and PW2 to take complete control of all the business set up by the deceased and PW2. By this action, the plaintiff claimed that the bungalow was held on trust by the defendant for the plaintiff and for the bungalow to be transferred to the plaintiff's name. The High Court found that no trust could be created over a company's property by a shareholder as the property of a company belonged to the company and not its shareholders or director. Hence, this appeal.

Held, allowing the appeal:

(1) There was no necessity for the deceased to draw up a written trust deed as this was a family business. The deceased's intention to buy the bungalow as a gift to the plaintiff was clear from PW2's evidence. The plaintiff had proved that his late father had made clear, unequivocal and irrevocable words to the plaintiff and his mother that the bungalow was purchased for the plaintiff as his matrimonial home. The trust came into existence once the deceased declared to PW2 of his intention to purchase the bungalow for the plaintiff. As the bungalow was held by the defendant on trust for the plaintiff, the defendant was under a legal obligation to transfer the bungalow to the plaintiff as intended by the deceased. Since

the defendant evaded the obligation on the basis the bungalow was registered under the defendant's name, the court had the power to pierce the corporate veil. The plaintiff never stated the bungalow belonged to the defendant, but the plaintiff's stand had been consistent in that the bungalow, though registered in the defendant's name, it was bought by his late father for him. The plaintiff never made an offer to buy the bungalow from the defendant. Instead, it was DW2 who offered to sell the bungalow to the plaintiff to which the plaintiff disagreed. The learned judge: (a) was plainly wrong in holding that the defendant's company did not hold the bungalow in trust for the plaintiff; and (b) erred in law and in fact in concluding the plaintiff's claim was an afterthought (see paras 33–35, 38 & 40–42).

[Bahasa Malaysia summary

Ini adalah rayuan terhadap keputusan Mahkamah Tinggi yang menolak tuntutan perayu ('plaintif') terhadap responden ('defendan'). Saham defendan telah dibeli oleh Lee Poh Sin yang meninggal dunia pada 2018 ('si mati') dan isterinya, Low Nang Hiang ('PW2'). Plaintif dan kakaknya ('DW2') adalah pemegang saham dan pengarah defendan. Lee Poh Sin dan PW2 adalah ibu bapa plaintif dan DW2. Sebuah banglo di Sandakan, Sabah ('banglo') telah dibeli oleh defendan pada 2008 ketika si mati masih hidup. Plaintif memplid bahawa banglo itu dibeli oleh si mati untuk plaintif sebagai hadiah atas sumbangannya kepada perniagaan keluarga kerana dia akan menghabiskan lebih banyak masa di Sabah. Plaintif mendakwa bahawa selepas si mati meninggal dunia, DW2 telah mengawal defendan dan melancarkan beberapa siri tindakan mahkamah terhadap plaintif dan PW2 untuk mengawal sepenuhnya semua perniagaan yang ditubuhkan oleh si mati dan PW2. Melalui tindakan ini, plaintif mendakwa banglo itu dipegang secara amanah oleh defendan untuk plaintif dan untuk banglo itu dipindahkan kepada nama plaintif. Mahkamah Tinggi mendapati tiada amanah boleh diwujudkan ke atas harta syarikat oleh pemegang saham kerana harta syarikat adalah milik syarikat dan bukan pemegang saham atau pengarahnya. Oleh itu, rayuan ini.

Diputuskan, membenarkan rayuan:

(1) Si mati tidak perlu membuat surat ikatan amanah bertulis kerana ini adalah perniagaan keluarga. Hasrat si mati untuk membeli banglo itu sebagai hadiah kepada plaintif adalah jelas daripada keterangan PW2. Plaintif telah membuktikan bahawa mendiang bapanya telah membuat kata-kata yang jelas, tidak berbelah bahagi dan tidak boleh ditarik balik kepada plaintif dan ibunya bahawa banglo itu dibeli untuk plaintif sebagai rumah perkahwinannya. Amanah itu wujud sebaik si mati mengisytiharkan kepada PW2 hasratnya untuk membeli banglo itu untuk plaintif. Oleh kerana banglo itu dipegang oleh defendan atas amanah untuk plaintif, defendan berada di bawah kewajipan

undang-undang untuk memindahkan banglo tersebut kepada plaintif seperti yang dimaksudkan oleh si mati. Memandangkan defendan mengelak kewajipan atas dasar banglo itu didaftarkan di bawah nama defendan, mahkamah mempunyai kuasa untuk menembusi tirai korporat. Plaintif tidak pernah menyatakan banglo itu milik defendan, tetapi pendirian plaintif adalah konsisten bahawa banglo itu, walaupun didaftarkan atas nama defendan, ia dibeli oleh mendiang bapanya untuknya. Plaintif tidak pernah membuat tawaran untuk membeli banglo itu daripada defendan. Sebaliknya, DW2 yang menawarkan untuk menjual banglo itu kepada plaintif yang tidak dipersetujui oleh plaintif. Hakim yang bijaksana: (a) secara nyata silap apabila berpendapat bahawa syarikat defendan tidak memegang banglo itu sebagai amanah untuk plaintif; dan (b) terkhilaf di sisi undang-undang dan fakta dalam membuat kesimpulan tuntutan plaintif adalah suatu yang difikirkan semula (lihat perenggan 33–35, 38 & 40–42).]

Cases referred to

Grant v Grant (1865) 55 ER 776 (refd)
Law Kam Loy and Anor v Boltex Sdn Bhd and others [2005] MLJU 225; [2005] 3 CLJ 355, CA (refd)
Prest v Petrodel Resources Ltd and others [2013] UKSC 34, SC (folld)
Rajadurai Ampalavy v Alakheswari A Rajadurai & Anor [2017] 1 LNS 1429, HC (refd)
Salomon v A Salomon & Co Ltd [1897] AC 22, HL (refd)
Wan Naimah v Wan Mohamad Nawawai [1974] 1 MLJ 41, FC (refd)

Appeal from: Civil Suit No SDK-22 NCVC-10/5 of 2020 (High Court, Sabah)

Caroline Hee Jin Chu (Morgan Tsen) (Tan Pang Tsen & Co) for the appellant. Tiong Jia Yi (Szetu & Co) for the respondent.

Hadhariah Syed Ismail JCA:

INTRODUCTION

[1] The appellant who is the plaintiff in the original suit claims against the respondent ('defendant') that the bungalow known as Lot B11, Garden Villa, Mile 6, North Road, Sandakan, Sabah held under Master Title No CL 075477584 ('bungalow') is held on trust by the respondent for the appellant and for the said bungalow to be transferred to the appellant's name.

[2] It was not disputed that the bungalow is registered under the respondent's name.

[3] The High Court found that no trust can be created over a company's property by a shareholder as the property of a company belongs to the company and not it's shareholders or director and dismissed the appellant's claims. Hence, this appeal.

[4] For convenience, parties will be referred to as the plaintiff and the defendant as in the High Court.

BACKGROUND FACTS

[5] The defendant was incorporated on 30 August 1995 under the name of Merlipan Sdn Bhd. The shares of Merlipan Sdn Bhd were bought over by Lee Poh Sin and his wife, Low Nang Hiang and the name was changed to Ladang Merlipan (Sabah) Sdn Bhd on 26 October 1995. On 28 April 2009, Ladang Merlipan (Sabah) Sdn Bhd was changed to Ladang Sri Harapan (Sabah) Sdn Bhd.

[6] The plaintiff was a shareholder of the defendant and was a director of the company from 24 May 2005 until 12 August 2020.

[7] The other shareholder and director of the defendant was the sister of the plaintiff, Lee Yee Wuen, who testified for the defendant as DW2.

[8] Lee Poh Sin and Low Nang Hiang were the parents of the plaintiff and DW2. Lee Poh Sin passed away on 10 September 2018 ('the deceased').

[9] The bungalow was purchased by the defendant from the developer on 13 August 2008 when the deceased was alive.

[10] The plaintiff pleaded that the bungalow was bought by the deceased for the plaintiff as a gift for his contribution to the family business as he would be spending more time in Sabah.

[11] It was further pleaded that the defendant was only holding the bungalow on trust for the plaintiff, the particulars of which were:

(a) the full purchase price was to be paid by the defendant;

(b) all expenditure were to be paid by the defendant;

(c) the plaintiff and his family had been staying in the bungalow as their matrimonial home since the delivery of its vacant possession;

(d) no other employee had ever stayed in the bungalow except for his and DW2's parents when they came to Sandakan. There is a bungalow in the defendant's estate for the use of the directors of the defendant;

(e) the plaintiff was not paid any dividends or salary for his service to the defendant and to Kien Yiap Trading Sdn Bhd (Kien Yiap), a related company and a shareholder of the defendant;

(f) the full purchase price for the bungalow and all expenses were paid by the defendant to be taken as company's expenses as decided by the deceased; and

(g) the bungalow was bought for the plaintiff after his and DW2's parents considered that they had bought houses for DW2.

[12] The plaintiff alleged that after the deceased passed away, DW2 took control of the defendant and Kien Yiap and launched a series of court actions against the plaintiff and Low Nang Hiang (PW2) to take complete control of all the business set up by the deceased and PW2.

[13] DW2 as a director of the defendant, ceased to pay for the expenditure of the said bungalow and had by email dated 17 March 2020 demanded the keys to the bungalow, to which the plaintiff refused to give, maintaining that the bungalow belongs to him.

[14] By this action, the plaintiff sought for the following reliefs against the defendant:

(a) a declaration that the bungalow is held on trust by the defendant for the plaintiff;

(b) a declaration that the plaintiff is the beneficial owner of the bungalow;

(c) a declaration that the plaintiff is entitled to the quiet use and enjoyment of the bungalow;

(d) an injunction against the defendant whether by itself or by its servants and/or agents from interfering and from selling or creating any encumbrances over the said bungalow to deprive the plaintiff of the ownership and use of the said bungalow;

(e) an order that the defendant do forthwith transfer to the plaintiff the bungalow and all expenses thereof shall be paid and borne by the defendant;

(f) an order that the costs incurred by the plaintiff herein shall be borne and paid by the defendant on a full indemnity basis; and

(g) such other orders or reliefs deems fit by the court.

[15] In its defence, the defendant denied the plaintiff's allegation and pleaded that the bungalow was bought by the defendant as an investment and for the use of all directors of the defendant including their family members.

[16] In response to the plaintiff's allegation that he was not paid salary or dividend from the defendant or Kien Yiap, the defendant averred that in 2011, there was an agreement between the deceased, the plaintiff and DW2 that the respective directors would only draw their salary from a specific company even though they may be directors in the other companies. Since then, the plaintiff drew his salary from Perfect Oil Resources Sdn Bhd and DW2 from the defendant.

DECISION OF THE HIGH COURT

[17] The learned High Court judge dismissed the plaintiff's claims with costs. In coming to the decision, the learned trial judge gives the following reasons:

(a) an individual such as the deceased was not in law, able to create a trust for and on behalf a company so that the company was legally bound to honour that alleged trust;

(b) to agree with the plaintiff that the defendant was holding the bungalow on trust for the plaintiff would be to disregard the trite principle of separate legal entity between a company, its shareholders and directors;

(c) piercing of corporate veil of the defendant never formed part of the plaintiff's pleaded case;

(d) that the principle in *Prest v Petrodel Resources Ltd and others* [2013] UKSC 34 does not apply; and

(e) from the exchange of contemporaneous letters, the plaintiff admitted the bungalow belonged to the defendant and the allegation of trust was a recent invention by the plaintiff.

THE APPEAL

[18] The main issue for consideration in this appeal is whether the bungalow was held on trust by the defendant for the plaintiff?

[19] At para 4 of the memorandum of appeal, the plaintiff contended that the learned High Court judge erred in law and in fact in making a finding that there was no trust created, in failing to appreciate that:

(a) the defendant is a family business with the deceased as the decision maker in all the family business;

(b) the evidence of Madam Low Nang Hiang (PW2) that the deceased purchased the bungalow for the plaintiff and his family;

(c) the elements giving rise to a trust had been satisfied;

(d) the principle of law that property legally vested in a company may belong beneficially to the controller, if the arrangements in relation the property are such as to make the company its controller's nominee or trustee for that purpose;

(e) the registering of the bungalow under the name of the defendant only complete the trust in the defendant as a trustee;

(f) there was no evidence of any resolution passed for the purchase of the bungalow for the defendant as an investment as alleged; and

(g) there is no necessity for a trust deed for a trust to be created.

[20] At para 6 of the memorandum of appeal, the plaintiff contended that the learned High Court judge erred in only taking into consideration of one letter instead of all the correspondence as a whole in coming to a finding that there was intention on the part of the plaintiff to purchase the bungalow from the defendant.

THE PLAINTIFF'S SUBMISSION

[21] On both the issue of separate legal entity and whether a trust can be created by an individual for and on behalf of a company, learned counsel for the plaintiff relies on the English case of *Prest v Petrodel Resources Ltd and others* [2013] UKSC 34. *Prest*'s case deals with a wife's claim for ancillary reliefs following a divorce. The claim involved seven residential properties, of which five were registered under the name of Petrodel Resources Ltd ('PRL') and two under Vermont Petroleum Ltd (Vermont). PRL and Vermont were the husband's companies. The issue before the court is whether the court has power to order the transfer of these seven properties to the wife given that they legally belong not to the husband but to his companies.

[22] The court in the first instance found as a fact that all these properties (matrimonial home) were acquired by PRL before it began commercial operations and began to generate funds of its own. This formed the basis on which the trial judge found that the matrimonial home was held by PRL on trust for the husband from its acquisition in 2001. As no rent was paid to PRL for the family's occupation of the matrimonial home, the court held that this is a clear case of the husband using PRL as a vehicle to hold legal title on trust for himself.

[23] In *Prest*'s case, the United Kingdom Supreme Court held the seven properties were held by PRL and Vermont on trust for the husband and allowed the wife's claims.

[24] For the purpose of this appeal, learned counsel for the plaintiff quoted

paras 35 and 52 of the judgment delivered by Lord Sumption. We added part of para 28 of the judgment as we think it is also relevant.

[25] At paras 28, 35 and 52 of the judgment, Lord Sumption said:

> 28. The evasion principle is different. It is that the court may disregard the corporate veil if there is a legal right against the person in control of it which exists independently of the company's involvement, and a company is interposed so that the separate legal personality of the company will defeat the right or frustrate its enforcement.
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> 35. I conclude that there is a limited principle of English law which applies when a person is under an existing legal obligation or liability or subject to an existing legal restriction which he deliberately evades or whose enforcement he deliberately frustrates by interposing a company under his control. The court may then pierce the corporate veil for the purpose, and only for the purpose, of depriving the company or its controller of the advantage that they would otherwise have obtained by the company's separate legal personality. The principle is properly described as a limited one, because in almost every case where the test is satisfied, the facts will in practice disclose a legal relationship between the company and its controller which will make it unnecessary to pierce the corporate veil ... For all of these reasons, the principle has been recognized far more often than it has been applied. But the recognition of a small residual category of cases where the abuse of the corporate veil to evade or frustrate the law can be addressed only by disregarding the legal personality of the company is, I believe, consistent with authority and with long standing principles of legal policy.
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> 52. Whether assets legally vested in a company are beneficially owned by its controller is a highly fact-specific issue. It is not possible to give general guidance going beyond the ordinary principles and presumption of equity, especially those relating to gifts and resulting trusts. But I venture to suggest, however tentatively, that in the case of the matrimonial home, the facts are quite likely to justify the inference that the property was held on trust for a spouse who owned and controlled the company. In many, perhaps most cases, the occupation of the company's property as the matrimonial home of its controller will not be easily justified in the company's interest, especially if it is gratuitous. The intention will normally be that the spouse in control of the company intends to retain a degree of control over the matrimonial home which is not consistent with the company's beneficial ownership. Of course, structures can be devised which give a different impression, and some of them will be entirely genuine. But, where, say, the terms of acquisition and occupation of the matrimonial home are arranged between the husband in his personal capacity and the husband in his capacity as the sole effective agent of the company (or someone else acting at his direction), judges exercising family jurisdiction are entitled to be skeptical about whether the terms of occupation are really what they are said to be, or are simply a sham to conceal the reality of the husband's beneficial ownership.

[26] Based on the evidence given by the plaintiff and his mother, it is submitted that the deceased had intended for the bungalow to be held on trust by the company and the court has the power to pierce the corporate veil as decided in *Prest*'s case. It is submitted that piercing the corporate veils a question of law and need not be pleaded. Therefore, the principles in *Prest*'s case applies in the plaintiff's case.

[27] It is also submitted that the learned High Court judge erred in relying solely on the fact that the bungalow is registered under the defendant's name; there was no trust deed and the plaintiff agreed the bungalow belongs to the defendant. It is submitted that the learned judge did not consider the entire evidence.

THE DEFENDANT'S SUBMISSION

[28] Learned counsel for the defendant submitted that the learned trial judge is correct in her findings on separate legal entity between a company, its shareholders and directors as enunciated in *Salomon v A Salomon & Co Ltd* [1897] AC 22.

[29] It is submitted that in para 10 of his statement of claim, the plaintiff pleaded '... the late Lee Poh Sin bought a bungalow for the plaintiff as a gift for his contribution to the family business'. However, it is an undisputed fact that the bungalow was not bought by the late Lee Poh Sin. It was purchased by the defendant using its own funds.

[30] It is further submitted that even assuming the late Lee Poh Sin did promise to purchase the bungalow for the plaintiff, the defendant company is not privy to the agreement and cannot be bound by it, by the operation of the doctrine separate legal entity. *Law Kam Loy and Anor v Boltex Sdn Bhd and others* [2005] MLJU 225; [2005] 3 CLJ 355 was cited.

[31] There is no error of facts or law in the learned judge's decision and her findings of facts should not be disturbed.

OUR DECISION

[32] The law as we understand it is that a trust need not be in writing provided that the words used are clear and unequivocal (*Grant v Grant* (1865) 55 ER 776; and *Wan Naimah v Wan Mohamad Nawawai* [1974] 1 MLJ 41).

[33] Therefore, we agree with the submission of the learned counsel for the plaintiff that there is no necessity for the deceased to draw up a written trust deed as this is a family business. In our view, the plaintiff's explanation that 'My

late father said he is buying the house for me. How can I insist to have it in writing? You mean I can't even trust my own father?' is acceptable to the court. In *Rajadurai Ampalavy v Alakheswari A Rajadurai & Anor* [2017] 1 LNS 1429 referred to us by counsel for the plaintiff, the court accepted the plaintiff's explanation that it never occurred to him to have a written agreement drawn up simply because he trusted his daughter and son in law would keep their words as this is not uncommon in family arrangements.

[34] In this case, the deceased's intention to buy the bungalow as a gift to the plaintiff is clear from the mother's (PW2) evidence who testify as follows:

> Before the IJM bungalow was bought, my late husband had discussed the buying of the IJM bungalow. My late husband told me that he wanted to buy the house for our son but shall use the company's money to buy. In Sabah, he has no house of his own. It is our intention to buy this IJM bungalow to be given to our son for him and his family to stay.

[35] It is not disputed that the deceased is the controller of the defendant's company. He is the decision maker. Based on the unchallenged testimony of the plaintiff (PW1) and PW2, we find the plaintiff has proved that his late father has made clear, unequivocal and irrevocable words to the plaintiff and his mother that the bungalow was purchased for the plaintiff as his matrimonial home. The trust came into existence once the deceased declared to PW2 of his intention to purchase the bungalow for the plaintiff.

[36] It is also not disputed that the bungalow was a matrimonial home of the plaintiff. His family occupied the bungalow from the time vacant possession was delivered in 2012 until now. His parents and DW2 occasionally occupy the bungalow when they came to Sandakan. The employee of the company never occupied the bungalow.

[37] It is pertinent to note that the defendant's company never collected any rental from the plaintiff. If the defendant's version that the bungalow is purchased as an investment, there is no company resolution stating the investment.

[38] It was under those circumstances that we agree with the submission of counsel for the plaintiff that the principles in *Prest v Petrodel Resources Ltd* would apply. As we found the bungalow is held by the defendant on trust for the plaintiff, the defendant is under a legal obligation to transfer the bungalow to the plaintiff as intended by the deceased. Since the defendant evades the obligation on the basis the bungalow is registered under the defendant's name, the court has the power to pierce the corporate veil.

[39] Moving on to the correspondences exchanged between the plaintiff and DW2. These correspondences can be found in the Appeal Record Volume 2B at pp 317, 318, 321, 322, 323, 324, and 332. The learned judge held:

(a) the plaintiff stated in no equivocal terms that the bungalow belonged to the defendant; and

(b) the allegation that the bungalow was purchased and held on trust for the plaintiff by the defendant was a recent invention by the plaintiff.

[40] We have perused all the letters. We agree with the submission of the counsel for the plaintiff that the plaintiff never states the bungalow belonged to the defendant. What was not disputed was the fact that the bungalow was registered in the name of the defendant and therefore belong to the defendant's company. But, the plaintiff's stand has been consistent in that the bungalow, though registered in the defendant's name, but it was bought by his late father for him.

[41] We also find as a fact that the plaintiff never make an offer to buy the bungalow from the defendant. Instead, it was DW2 who offered to sell the bungalow to the plaintiff to which the plaintiff disagree.

[42] Based on our findings above, we find the learned Judge is plainly wrong in holding that the defendant's company did not hold the bungalow in trust for the plaintiff. We further find the learned Judge erred in law and in fact in concluding the plaintiff's claim is an after thought.

[43] For the aforesaid reasons, we find merits in the appeal. Therefore, we allow the appeal and set aside the order of the High Court dated 18 January 2022. We thus allow judgment to be entered for the plaintiff as prayed for in para 18(a) to (f) of the statement of claim. Costs of RM50,000 here and below to the plaintiff subject to allocator. Costs of RM85,000 already paid by the plaintiff to the defendant to be refunded by the defendant to the plaintiff.

Appeal allowed.

Reported by Ahmad Ismail